

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID A. WINDHAUSER,

Plaintiff,

v.

BAUSCH & LOMB, INC.,

Defendant.

AFFIDAVIT

Civil Action No. 01-CV-6212L(F)

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

RAYMOND J. PASCUCCI, ESQ., being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice in the courts of New York State and the United States District Court for the Western District of New York. I am a member of the law firm of Bond, Schoeneck & King, PLLC, attorneys for defendant Bausch & Lomb, Inc. ("Bausch & Lomb" or "the Company"). I am fully familiar with the proceedings in this action, and I make this affidavit in support of Bausch & Lomb's Motion for Summary Judgment with Respect to Plaintiff's New Claims in His Amended Complaint.

2. On January 15 and 16, 2002, and on March 31, 2004, on behalf of the Company, I took the deposition of plaintiff David A. Windhauser ("Plaintiff"). Copies of the pages from Plaintiff's deposition transcript that are cited in Bausch & Lomb's Memorandum of Law are attached as Exhibit A.

3. On February 15, 2002, Plaintiff's counsel took the deposition of Martha Moore. Copies of the pages from Ms. Moore's deposition transcript that are cited in Bausch & Lomb's Memorandum of Law are attached as Exhibit B.

4. On February 28, 2002, Plaintiff's counsel took the deposition of Katharine Gillen. Copies of the pages from Ms. Gillen's deposition transcript that are cited in Bausch & Lomb's Memorandum of Law are attached as Exhibit C.

5. On May 30, 2002, Plaintiff's counsel took the deposition of Andy Desmann. Copies of the pages from Mr. Desmann's deposition transcript that are cited in Bausch & Lomb's Memorandum of Law are attached as Exhibit D.

6. On May 30, 2002, Plaintiff's counsel took the deposition of Julie Allen-Guisbert. Copies of the pages from Ms. Allen-Guisbert's deposition transcript that are cited in Bausch & Lomb's Memorandum of Law are attached as Exhibit E.

7. On June 4, 2002, Plaintiff's counsel took the deposition of Clayton Osborne. Copies of the pages from Mr. Osborne's deposition transcript that are cited in Bausch & Lomb's Memorandum of Law are attached as Exhibit F.

8. On June 10, 2002, Plaintiff's counsel took the deposition of Ruth Sleeman. Copies of the pages from Ms. Sleeman's deposition transcript that are cited in Bausch & Lomb's Memorandum of Law are attached as Exhibit G.

9. At the depositions taken in this case, various exhibits were marked for identification. Copies of the deposition exhibits cited in Bausch & Lomb's Memorandum of Law are attached as follows:

Exhibit H	--	Deposition Exhibit 3
Exhibit I	--	Deposition Exhibit 4A-4C
Exhibit J	--	Deposition Exhibit 5
Exhibit K	--	Deposition Exhibit 11
Exhibit L	--	Deposition Exhibit 12
Exhibit M	--	Deposition Exhibit 17
Exhibit N	--	Deposition Exhibit 18
Exhibit O	--	Deposition Exhibit 26
Exhibit P	--	Deposition Exhibit 42
Exhibit Q	--	Deposition Exhibit 59

Exhibit R -- Deposition Exhibit 90
Exhibit S -- Deposition Exhibit 95

10. On November 20, 2003, oral argument was held before the Court with respect to the Company's prior motion for summary judgment and Plaintiff's motion for leave to amend the complaint. Copies of the pages from the oral argument transcript that are cited in Bausch & Lomb's Memorandum of Law are attached as Exhibit T.

/s/ Raymond J. Pascucci
Raymond J. Pascucci, Esq.
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Sworn to before me this
20th day of May, 2004.

/s/ Valerie A. Beard
Notary Public

Valerie A. Beard
Notary Public, State of New York
Qualified in Madison County No. 9820885
My Commission Expires June 30, 2006